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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-220132

DATE: November 26, 1985

MATTER OF: NJCT Corporation

DIGEST:

1. GAO will not object to an agency's determination that an offered product does not meet its minimum needs unless the determination is unreasonable. Where the protester's descriptive literature submitted with its price quotes shows that the product it is offering does not meet the agency's stated salient requirements, the agency properly may reject the protester's quotes. Moreover, the offeror's blanket statement of compliance with all requirements does not make the offer acceptable.
2. When a design feature, such as size or weight, is specified as a salient characteristic, a product offered as being equal to a stated brand name must meet that characteristic precisely.
3. Where it is necessary, an agency properly may obtain additional technical information from a Federal Supply Schedule offeror beyond what the offeror furnishes along with its response to the agency's request for schedule price quotation.
4. Protester's offered product should not have been rejected for failing to meet a certain salient feature where the offered product of the awardee also did not meet this feature. However, rejection for this reason did not prejudice protester, and thus is not cause for disturbing the award, since protester's offered product was rejected for other valid reasons.

NJCT Corporation protests the Department of the Army's issuance of a delivery order to Johnson-Lancaster, Inc. for

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an automatic dishwasher under the General Services Administration Federal Supply Schedule (FSS). We deny the protest in part and dismiss it in part.

Before placing the delivery order, the Army issued a request for quotations (RFQ) to FSS vendors on the multiple award FSS for food service equipment, specifying a Hobart C-Line automatic rack conveyor dishwasher or equal. The RFQ listed 10 salient characteristics that the equal product had to have and asked vendors to submit technical literature for evaluation. NJCT, along with its price quotations, submitted standard technical brochures for the Champion PR-36 model dishwasher and the Vulcan A64 model dishwasher.

The Army evaluated the seven responses it received to the RFQ, and found NJCT's quotes for the Champion and Vulcan models lower than Johnson-Lancaster's quote for the Stero SCT-90 model dishwasher. The agency, relying on the brochures furnished by NJCT, found unacceptable both the Champion and Vulcan models offered by the company because they lacked a number of the required features. For example, neither model had the floor clearance required by the RFQ. Johnson-Lancaster's offered model was found to meet all the RFQ's salient characteristics, and an order was placed under that firm's FSS contract.

NJCT contends that the Champion and Vulcan dishwashers it offered did meet the RFQ requirements. The company argues that certain errors were made by the Army in evaluating its technical data. NJCT also argues that its technical data established that its offered Champion equipment would meet all salient requirements by the statement therein that optional model accessories would be furnished "when specified."

The Army argues that NJCT has failed to prove that its evaluation of NJCT's technical literature was unreasonable. The agency states that NJCT's Champion dishwasher, in addition to not having 10 racks, had only a 14 gauge stainless steel tank rather than 16 gauge as specified in the RFQ. Also, the required floor clearance, as stated in the RFQ's salient characteristics, was 8-1/2 inches, but the clearance for NJCT's Champion model was only 6 inches. The Army further states that NJCT's literature failed to include any information regarding whether the dishwasher met salient characteristics for steam pressure and whether the dishwasher had a table limit switch.

As to the Vulcan model that NJCT offered, the Army states that besides not having 10 racks, its racks did not meet the RFQ's dimensional requirements. The Army further states that the RFQ's prewash pump motor requirement was for 1-1/2 horsepower motor, but the literature provided by NJCT stated that such a motor was not available. Finally, the Army states that like the Champion model NJCT offered, the floor clearance for the Vulcan model dishwasher was less than 8-1/2 inches.

Federal agencies must procure from a multiple-award FSS at the lowest price consistent with their minimum needs. American Sterilizer Co., B-212933, Jan. 26, 1984, 84-1 C.P.D. ¶ 122. The determination as to which offered products meet those needs is primarily within the jurisdiction of the procuring agency, and we will not interfere unless the determination is shown to be unreasonable. See Quest Electronics, B-193541, Mar. 27, 1979, 79-1 C.P.D. ¶ 205.

We cannot find that the Army's determinations regarding the unacceptability of NJCT's offered products were unreasonable. In general, where a protester's descriptive literature shows that its product fails to conform to stated salient characteristics, the offer properly must be rejected. See Jensen Corp., B-216746, Jan. 17, 1985, 85-1 C.P.D. ¶ 49. NJCT has provided us with no evidence or argument to dispute the Army's finding that the Champion model dishwasher it offered had less than the required number of racks and had less than the required floor clearance. Indeed, NJCT indicates in its comments on the Army's protest report that the model has 8 racks and a floor clearance of 7 inches. Further, NJCT admits that the tank on the Champion model is 14 gauge stainless steel rather than the required 16 gauge steel. In addition, NJCT has provided us with nothing that would show that the Army, in evaluating the firm's offer, unreasonably relied on the literature's failure to include information on steam pressure and whether the Champion model had a table limit switch.

With regard to the Vulcan model that NJCT offered, the company argued without any support in its protest letter that the "model matches the dimensions in the specifications." NJCT made no mention of the size of the prewash pump motor and the floor clearance of the Vulcan model. In its comments on the Army's protest report, NJCT makes no

argument at all regarding the acceptability of the Vulcan model. Where an agency specifically rebuts issues raised in the initial protest and the protester fails to comment on the agency's rebuttal in its comment, we will consider these issues to have been abandoned by the protester. Radionic Hi-Tech, Inc., B-219116, Aug. 26, 1985, 85-2 C.P.D. ¶ 230. In any event, NJCT simply has failed to prove that the Army's evaluation of its literature on the Vulcan model dishwasher was unreasonable.

NJCT also contends that it is not necessary that an equal item have the same design characteristics as the brand name item and, therefore, the contracting agency cannot conclude that differences in design characteristics automatically make a product not equal. We, in fact, have held that when a salient characteristic is stated in general terms, the equal product need not meet the characteristic exactly as the brand name product does; it need only be functionally equivalent to the brand name in meeting that characteristic. Cohu, Inc., B-199551, Mar. 18, 1981, 81-1 C.P.D. ¶ 207. Here, however, the RFQ set forth in very specific terms the design features that the equal product had to meet. When a design feature, such as size or weight, is specified, the equal product must meet that requirement precisely. Id.

Accordingly, we have no legal basis to object to the Army's evaluation of NJCT's offers. In this respect, it is not relevant that NJCT's technical literature for the Champion dishwasher states that option model accessories would be furnished when specified. A blanket statement of compliance is not sufficient to cure descriptive literature that fails to meet salient requirements. R.A. Miller Industries, Inc., B-215084, Sept. 24, 1984, 84-2 C.P.D. ¶ 332.

NJCT also protests that Johnson-Lancaster's offer should not have been accepted. NJCT argues that Johnson-Lancaster submitted no appropriate literature on the Stero SCT-90 model dishwasher, because the literature submitted was on the Stero ST76 model instead. NJCT further contends that the ST76 literature shows that the dishwasher should have been found to be noncompliant with the RFQ's salient characteristics because: (1) the frame and feet are not stainless steel, (2) the machine's voltage does not range between 200 and 230, (3) steam pressure and pounds of steam per hour are not indicated, (4) the prewash motor is

less than 1-1/2 horsepower, (5) common drains and exhaust vent hoods are optional features, and (6) there are only 7 racks.

From our review of the literature submitted by Johnson-Lancaster, we find no support for NJCT's arguments. While the literature submitted by Johnson-Lancaster was for the Stero ST76 model, the company attached a note that stated that the SCT-90 was similar to the ST76, the differences being the SCT-90 is 90 inches with a 1-1/2 horsepower scrapper (prewash motor) and a 2 horsepower wash. In our opinion, it was reasonable for the Army to assume that, except for the differences outlined by Johnson-Lancaster, the technical literature on the ST76 also described the SCT-90.

As to the precise deficiencies alleged by NJCT, Johnson-Lancaster's literature specifically states that the feet of the offered dishwasher are stainless steel and that a stainless steel frame is optional. The literature also indicates that the machine's voltage is in the required range. Still further, the literature shows a steam pressure of 20 pounds flowing with a maximum steam consumption of 417 gallons an hour. Common drains, vent hoods, and stainless steel frame are shown on Johnson-Lancaster's literature as optional items.

NJCT further complains that Johnson-Lancaster was given an opportunity to explain the technical literature it submitted in response to the RFO, particularly with respect to features described in the literature as optional, but NJCT was not afforded the same benefit of explanation.

We see nothing objectionable in the Army's apparent verification that the features noted in Johnson-Lancaster's literature as optional in fact would be furnished if a delivery order were issued to the company. We have held that before placing an order under the FSS, where it is necessary an agency may obtain additional information beyond what the offeror furnishes in response to the RFO. Amray, Inc., R-209481, June 6, 1983, 83-1 C.P.D. ¶ 608. We realize that the Army also could have afforded NJCT the opportunity to rectify any informational deficiencies in the technical literature it submitted. Nevertheless, given the fact that NJCT's literature revealed several structural deficiencies in its equipment, such as insufficient floor clearance and the wrong gauge of stainless steel, that were

not curable through the submission of additional literature, we cannot say that the Army acted unreasonably in not requesting additional information from NJCT.

We do note that Johnson-Lancaster's literature states that its offered model has only seven racks. A contracting agency cannot enforce a requirement against one offeror while waving it for others without violating the fundamental principle that all offerors must be treated fairly and equally. Recyc Systems, Inc., B-216772, Aug. 23, 1985, 85-2 C.P.D. ¶ 216. Applying this standard here, we find that the Army should not have found NJCT offered equipment lacking for failure to have 10 racks since it accepted Johnson-Lancaster's equipment despite the fact that it has only 7 racks. However, since we have found that the Army's reliance on several other deficiencies in NJCT's equipment was a proper basis for rejecting the company's offer, NJCT was not prejudiced. That is, even if the Army had treated NJCT the same as it treated Johnson-Lancaster as to the number of racks for the dishwasher, NJCT still would not have been entitled to an award because its offered product was otherwise unacceptable.

Finally, NJCT asserts that Johnson-Lancaster in fact will not supply the type of dishwasher called for by the RFQ and that inspection at the destination point for the delivered machine would confirm this. We dismiss this issue, however, because an allegation that the awardee's performance may violate a contract term or requirement involves a matter of contract administration, which is the responsibility of the contracting agency, not our Office. Eclipse Systems, Inc., B-216002, Mar. 4, 1985, 85-1 C.P.D. ¶ 267.

The protest is denied in part and dismissed in part.

for *Seymour E. Van*
Harry R. VanCleve
General Counsel